

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H104406

BARBARA DENE, Employee	CLAIMANT
WALMART ASSOCIATES, INC., Employer	RESPONDENT
WALMART CLAIMS SERVICES, Carrier	RESPONDENT

OPINION FILED FEBRUARY 28, 2022

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in  
Springdale, Washington County, Arkansas.

Claimant appearing *pro se*.

Respondents represented by JAMES A. ARNOLD, II, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

On February 7, 2022, the above captioned claim came on for hearing at Springdale, Arkansas. A pre-hearing conference was conducted on November 17, 2021 and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked as Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee/employer relationship existed between the parties on May 6, 2021.
3. The claimant was earning an average weekly wage of \$412.49 which would entitle her to compensation at the weekly rates of \$275.00 for total disability benefits and

\$206.00 for permanent partial disability benefits.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Compensability of injury to claimant's leg in the form of a spider bite on May 6, 2021.
2. Related medical.
3. Temporary total disability benefits.

The claimant contends she sustained a spider bite on May 6, 2021 during the course and scope of her employment, and that she is entitled to medical benefits, including mileage and prescriptions, as well as reimbursement for her time missed from work.

The respondents contend that the claimant did not sustain a compensable injury on May 6, 2021, or any other date.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

#### FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at a pre-hearing conference conducted on November 17, 2021 and contained in a pre-hearing order filed that same date are hereby accepted as fact.
2. Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of a spider bite on May 6, 2021.

3. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with her compensable injury.

4. Claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits as a result of her compensable injury.

### FACTUAL BACKGROUND

The claimant is a 63-year-old woman who worked for respondent as a picker. Her job duties required her to take a cart around the store and fill online and phone orders. Claimant testified that she filled the orders with merchandise in the store, from the warehouse, and outside in the garden area. Claimant's work day began at 5:00 a.m. and she generally worked until 2:00 - 2:30 p.m.

Claimant testified that on May 6, 2021, she arrived at work at 5:00 a.m. and waited in the garden area for about 10 minutes because no one was present to take their temperatures. After her temperature was taken, claimant began her work duties. She testified that at approximately 9:00 a.m.:

I did one of those deep squats to put labels on the bottom totes and my leg just felt something. I've never felt that before so I didn't know what it was, but I felt something. And when I stood up it went away, so I didn't think anything of it. Mental note to myself to go to the bathroom when you are done and check out your leg.

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So I went to the bathroom after my run, it took about 15, 20 minutes and I couldn't see the back of my leg. So I had to ask the lady that was in the bathroom like, "Can you see anything on the back of my leg?"

Claimant testified that the lady informed her that there was a little brown dot on the

back of her leg. Claimant then went to lunch in the breakroom for an hour and when she started to get up “it felt like somebody had inserted like glue into the back of my leg, which was kind of strange. It didn’t hurt, but it was weird.”

When she took a break at 11:30 a.m., she took a picture of her leg. (This photo, along with a progression of other photos, was submitted into evidence by the claimant.) Claimant stated that she informed her team lead that she believed she had been bitten by something, but did not know what or where.

At 1:00 p.m. she took another break and the spot looked bigger, so at her daughter’s suggestion she had someone draw a circle around it. (This can also be seen in the photos.) Claimant left work between 2:00 and 2:30 p.m. and intended to stop by a clinic but did not do so because there had been a traffic accident. Instead, claimant went home, washed her leg, put medicine on the spot, took Benadryl, and went to bed.

Claimant testified that the next morning she woke up at 3:00 a.m. and went to the Mercy emergency room. Claimant was treated by Mercy and other physicians before seeking medical treatment at Washington Regional Medical Center where she was referred to Dr. Kellar. Medical records prior to Dr. Kellar were not submitted into evidence.

In his report of May 19, 2021, Dr. Kellar stated that claimant’s wound appeared to be a brown recluse spider bite. Dr. Kellar offered conservative treatment with antibiotics but noted that if an infection developed he would proceed with a debridement. Dr. Kellar ultimately performed a debridement procedure on May 28, 2021, and a second procedure to close the wound.

Claimant has filed this claim contending that she suffered a compensable injury in the form of a spider bite on May 6, 2021. She requests payment of related medical and

temporary total disability benefits.

### ADJUDICATION

Claimant contends that she suffered a compensable injury in the form of a spider bite on May 6, 2021. She contends that this occurred when she was working for the respondent filling orders. Claimant's claim is for a specific injury, identifiable by time and place of occurrence. In order to prove a compensable injury as the result of a specific incident that is identifiable by time and place of occurrence, a claimant must establish by a preponderance of the evidence (1) an injury arising out of and in the course of employment; (2) the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) medical evidence supported by objective findings establishing an injury; and (4) the injury was caused by a specific incident identifiable by time and place of occurrence. *Odd Jobs and More v. Reid*, 2011 Ark. App. 450, 384 S.W. 3d 630.

After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proof.

Initially, I note that claimant did not see a spider on May 6, 2021. As previously noted, claimant testified that she bent down to put a label on the bottom tote on her cart when she felt something. On cross-examination she described it as a "weird" feeling on the back of her leg. When this occurred, claimant made a mental note to check the back of her leg when she was able to go to the bathroom. While in the bathroom, claimant was unable to see her leg and asked a lady in there to look at it and was informed that there was a little brown dot.

Claimant subsequently went to lunch and after sitting for an hour started to get up and stated that her leg felt like someone had inserted glue into the back of her leg. At the time of her 11:35 break, claimant took a picture which is part of claimant's Exhibit #2. She also testified that at that time she reported the incident to her lead team. At the time of her next break at 1:05 p.m. claimant took another picture which is also part of claimant's Exhibit #2. A comparison of the 11:35 photo and the 1:05 photo shows a change in the size of the affected area. It was also at this time that claimant had someone draw a line around the area to show change in the area size.

Claimant left work between 2:00 and 2:30 with the intention of stopping by a clinic, but was unable to do so because of a traffic accident. After self treating that night the claimant went to the Mercy Emergency room the next morning and continued to treat with Mercy until she went to Washington Regional Medical Center for treatment and was referred to Dr. Kellar.

Dr. Kellar's May 19, 2021 report contains a history of injury consistent with claimant's testimony. In addition, Dr. Kellar stated:

She does not report finding a spider, but the pain did begin that morning at 9 and then the skin changes developed about 11 that morning.

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IMPRESSION: Brown recluse bite, according to the patient, occurring on May 6 sometime between 5 in the morning and 11 in the morning. It is reasonable that the bite occurred during this time based on the appearance of symptoms described by the patient.

I find claimant's testimony to be credible. Based on her testimony and the opinion of Dr. Kellar, I find that claimant has met her burden of proving by a preponderance of the

evidence that her injury arose out of and in the course and scope of her employment and that it was caused by a specific incident identifiable by time and place of occurrence. I also find that her injury caused internal or external physical harm to her body that resulted in the need for medical treatment and that she has offered objective findings establishing an injury by the observations of Dr. Kellar and the photos. Accordingly, I find that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of a spider bite on May 6, 2021, while working for respondent.

In reaching this decision, I note that there were some questions raised regarding brown recluse spiders and claimant's job in a well lit store. However, claimant testified that in filling orders she not only obtained items inside the store, but frequently had to get items in the store's warehouse and garden center. Claimant specifically testified that on May 6, 2021, she went to the parking lot and garden area at least four times between 5:00 a.m. and 9:00 a.m. I also note that claimant testified that she did not feel a bite or any other symptoms of an insect or spider bite prior to 9:00 a.m. on May 6, 2021.

Having found that claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury, respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury.

The final issue involves claimant's request for temporary total disability benefits. The injury to claimant's leg is a scheduled injury. A claimant who suffers a scheduled injury is entitled to receive compensation for temporary total or temporary partial disability benefits during the healing period or until the claimant returns to work, whichever occurs

first. *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W. 3d 822 (2001).

According to claimant's testimony she was taken off work sporadically for various periods of time throughout her treatment. While there seems to be no question that claimant did miss some work as a result of her injury, pursuant to A.C.A. §11-9-501(a)(1) compensation is not payable for the first seven days of disability resulting from an injury, excluding the day of injury. Claimant contends that she was initially taken off work for two weeks after her injury; however, there are no off work notes submitted into evidence for this time period. In fact, the medical records from this time period are not in evidence.

The only work note contained in evidence is dated August 18, 2021, and it indicates that claimant can return to work after seeing Dr. Kellar the next day. Dr. Kellar's reports do not address claimant's ability to work. Thus, while claimant may have missed some work due to her injury, there is insufficient evidence in the record to find that she missed sufficient days to entitle her to temporary total disability benefits pursuant to A.C.A. §11-9-501(a)(1). In reaching this decision, I note that claimant submitted a handwritten note regarding the number of hours of work she missed; however, I do not find this sufficient evidence proving that claimant was off work for those hours as a result of her compensable injury.

### AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she suffered a compensable injury in the form of a spider bite while working for respondent on May 6, 2021. Respondent is liable for payment of all reasonable and necessary medical treatment provided in connection with claimant's compensable injury.



Claimant has failed to prove by a preponderance of the evidence that she is entitled to temporary total disability benefits as a result of her compensable injury.

Respondent is liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$299.80.

IT IS SO ORDERED.

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GREGORY K. STEWART  
ADMINISTRATIVE LAW JUDGE